

1809794 (MIGRATION) [2019] AATA 6608 (30 SEPTEMBER 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1809794

MEMBER: Linda Holub

DATE: 30 September 2019

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Statement made on 30 September 2019 at 10:51am

CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – visa applicant in Australia unlawfully before marriage – validly married – financial, household and social aspects of relationship – parties’ commitment to relationship – protection visa application – adverse information – applicant left Australia – no persuasive evidence about ongoing and meaningful contact – relationship not genuine and continuing – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65, 349AA
Migration Regulations 1994 (Cth), r 1.15A, Schedule 2, cl 309.211(2)

CASE

He v MIBP [2017] FCAFC 206

1. Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

- 1) This is an application for review of a decision made by a delegate of the Minister for Immigration on 15 March 2018 to refuse to grant the visa applicants Partner (Provisional) (Class UF) visas under s.65 of the Migration Act 1958 (the Act).
- 2) The first named visa applicant (the visa applicant) applied for the visa on 11 July 2016 on the basis of his relationship with their sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
- 3) The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211(2) because the delegates was not satisfied that there was sufficient evidence to demonstrate that the applicant is the spouse or the defector Partner of the sponsor as required under s.5F or 5CB of the Migration Act.
- 4) The review applicant appeared before the Tribunal on 22 August and 5 September 2019 to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant. The Tribunal hearings was conducted with the assistance of an interpreter in the Arabic (Lebanese) and English languages although the sponsor chose to speak in English some of the time. The Tribunal is confident that she understood questions given her responses related to the questions put.
- 5) The review applicant was represented in relation to the review by her registered migration agent who attended both hearings.
- 6) For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

Background

- 7) The applicant was born in [year] and is from Lebanon. The Department's Decision Record records the following background in relation to the applicant and his application:
 2. "[The applicant] was previously married to [name] from [September] 1992 until she passed away [in November] 2008. There are two children from the relationship. His siblings are all residing in Lebanon.
 3. The applicant was granted a [Temporary] visa [in] September 1999. He has since been refused [other visas in 2001, 2005 and 2015]. The applicant was living in Australia from 2001 until his departure [in] January 2016.
 4. The sponsor is [age] years old. She was born in Lebanon. She was granted a [Partner] visa [in] July 1995 and acquired citizenship [in] August 2000. She is working as [an Occupation]. She was married to [name] from [April] 1996 and divorced officially [in] July 2012.

5. It is claimed in the application that the applicant was introduced to the sponsor by his relative [Name] in 2011 and they married [in] January 2013. They lived together until. The applicant left Australia [in] January 2016. The applicant and sponsor have not met in person since that date”¹.

- 8) The visa applicant has included one of his children in his application – his [child] born in [year].

Whether the parties are in a spouse or de facto relationship

- 9) Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen.

- 10) ‘Spouse’ is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant’s and review applicant’s household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP*[2017] FCAFC 206.

Are the parties validly married?

- 11) If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The parties claim they registered their marriage [in] January 2013 in Sydney, Australia. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

6. Commitment

- 12) The Tribunal has considered the nature of persons' commitment to each other including the duration of the relationship, the length of time they have lived together the degree of companionship and emotional support they draw from each other and whether they see the relationship as long-term.
- 13) The evidence before the Tribunal is that the parties met at a party in April 2011. The applicant wrote in his visa application that he was looking for a wife and was attracted to the sponsor. They spent a few months seeing and speaking to each other and in about August they decided to marry. They married in January 2013 and lived together with the

¹AAT file, folio 8/2.

sponsor's children until he left Australia. The application states that the applicant and the sponsor are in daily contact.

- 14) In his visa application providing details of the nature of their commitment to each other the applicant wrote that he and his wife care for and love each other. He referred to them having many will stresses with work, repayments and children and that they try to organise their duties so that things run smoothly. The applicant stated that he is missing his children a lot and that his wife is always very supportive of him.
- 15) In a hand written statement dated 13 July 2019 provided by the sponsor, she stated that the couple have known each other since childhood because their mothers are [relatives]. She stated that during the applicant's stay in Sydney even before they started a committed relationship the applicant used to visit her home because he was known to her and her ex-husband.
- 16) The sponsor wrote in her written statement that they celebrated their wedding at a restaurant with about 40 guests including all her family and a few of the applicant's friends. The couple gave inconsistent evidence at the hearing about the suburb in which their marriage celebration was held but following the inconsistent information being put to the sponsor in the terms required by s. 359AA of the *Migration Act* the Tribunal did not give this inconsistency any weight. The couple provided consistent evidence regarding the attendance of guests. No photos of the event were provided.
- 17) The sponsor submitted that she has not been able to travel to Lebanon since the applicant departed Australia because of her financial situation. The Tribunal notes however that in a Statutory Declaration provided by one of her [children], [s/he] states that [s/he] went to Lebanon a few ago and visited the visa applicant.
- 18) In relation to the degree of companionship and emotional support they provide each other, the Tribunal heard that the sponsor had financial difficulties and problems with her former husband and that the visa applicant provided her with comfort and support. The sponsor referred to the care the applicant provided her and the support he provided her [children].
- 19) The 13 July 2019 statement of the sponsor states they the couple are in contact with each other via [Social media] with the frequency of contact depending on the availability of internet in the applicant's village – sometimes several times a day and sometimes every they talk every three days. The couple gave consistent evidence on this at hearing. The sponsor also stated they enjoy each other's company and they supported each other.
- 20) The applicant provided the Department with copies of screen shots of contact with the sponsor:
 - a. the screenshot of 20 August 2016 shows six missed calls and three recorded messages totalling 51 seconds.
 - b. the screenshot of 15 and 16 August 2016 shows five recorded messages amounting to 66 seconds.
 - c. the screenshot of 15 and 18 July 2016 shows six missed calls and two messages totalling 13 seconds.

- d. the remaining sample screenshots showed similar missed calls and short recorded messages.

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21) Further screenshots of messages between the sponsor and the visa applicant for various dates were provided to the Tribunal.

- a. the screenshot of 7 and 8 October 2018 shows two voice messages amounting to a total of 26 seconds.
- b. the screenshot of 3 – 6 January 2019 shows four missed calls and three voice messages amounting to less than four minutes.
- c. the screenshot relating to 11, 12, 13, 15 and 18 January show four missed calls and one 12 second recorded message.
- d. the remaining sample screen shots similarly show evidence of short recorded messages and missed calls.

22) These screenshots provided to the Department and the Tribunal were not accompanied with any explanation as to what they are intended to show. Insofar as the Tribunal is concerned they do not provide convincing evidence of ongoing contact between the parties.

23) The Tribunal has considered the nature of persons' commitment to each other including the duration of the relationship, the length of time they have lived together the degree of companionship and emotional support they draw from each other and whether they see the relationship as long-term.

24) The Tribunal accepts that the couple have been married since January 2013 so they have known each other since then and claimed that they lived together from that time until January 2016 when the visa applicant left Australia. The Tribunal acknowledges that in the main they provided consistent evidence regarding various aspects of the commencement of their relationship, their marriage and aspects of the support they provide each other. The Tribunal has had regard to the various screen shots showing [Social media] contact between the parties and accepts they have been in contact with each but the evidence provided was not sufficiently persuasive that they have ongoing and meaningful contact with each other.

25) While the evidence provided shows that the parties are known to each other, it did not have the depth that the Tribunal would have expected of a couple that have been married since early 2013 and lived together for three years and have ongoing, continuing and meaningful contact. This raised concerns for the Tribunal that relationship is not genuine and the couple do not have a long term commitment to each other.

8. *Financial aspects*

26) The Tribunal has considered the financial aspects of the relationship including joint ownership of real estate and of major assets, any joint liabilities, the extent of pooling of financial resources, any legal obligations owed to the other party, and the basis of any sharing of day-to-day household expenses.

- 27) The Tribunal is cognisant of the fact that the parties live in different countries and therefore it can be difficult to establish the sharing bank accounts, joint assets and / or liabilities. However, the couple lived together from the time they married in January 2013 until 31 January 2016.
- 28) In his application the applicant stated that the couple share their income and have purchased property and a business and that they share expenses.
- 29) In a hand written statement dated 13 July 2019 provided by the applicant's sponsor to the Tribunal she stated that the applicant financially supported all her needs as she did not work but stayed home to care for her children. She wrote about financial difficulties she is facing as the applicant has been unable to able to work full-time since he returned to Lebanon. She stated that the applicant sent her money on one occasion and she transferred money to him twice. The sponsor provided the following evidence in support of the financial aspects of the relationship:
- a. Copy of receipts dated [December] 2016 and [March] 2019 showing that the sponsor transferred amounts of \$[amount] and \$[amount] to the visa applicant.
 - b. A copy of a receipt from a jeweller with the sponsor's name dated [September] 2012 for an amount of \$[amount]. It is not clear what item/s purchased were. At hearing the sponsor stated that this was for her wedding ring.
 - c. A related valuation certificate dated [February 2013] and a copy of a Diamond Grading Report dated [April] 2012. The description of the diamond in this report matches the diamond referred to in the valuation grading certificate.
 - d. Bank statements of the couple's joint Commonwealth Bank [account], and the visa applicant's Commonwealth Bank [account], his NAB and Arab Bank Australia accounts and correspondence in relation to his Westpac bank accounts.
 - e. Documents regarding the visa applicant's [business] and the sponsor's [business] from 2014.
- 30) In a written submission to the Tribunal dated 15 July 2019, it states that statements for the joint bank account from October 2013 until September 2014 are provided and that that "unfortunately there are no statements showing deposit and withdrawal and that account was closed after he left to Lebanon and stopped being used"².
- 31) The Tribunal heard evidence that the visa applicant now lives with his father at his property in Lebanon. The sponsor stated that his father has some land and the family grows vegetables in summer but in winter because of the snow they don't grow anything.
- 32) In relation to the couple's assets, the Tribunal established through oral evidence at hearing that the couple each have a house in their own names with separate mortgages but no joint assets. The sponsor explained that her family wanted her to maintain her assets in her own name so that in the future the property would be for her three [children]. She stated that her family supported her relationship with the visa applicant party because of this arrangement. She also explained that although they had a joint

²AAT file, folio 144.

bank account when the visa applicant was in Australia, it is no longer in use because the visa applicant is not in Australia earning an income.

- 33) In relation to why the various accounts in the visa applicant's name were not in joint names, the sponsor stated that they had a joint Commonwealth Bank account. She stated that she did not think the Arab Bank accounts should be in joint names because it was like a term deposit cash management account. The Tribunal put it to her that one of the accounts was a statement account and the other was a cash management account. In response the applicant stated that she didn't think what's this account what's that account.
- 34) The Tribunal noted in addition to the Arab Bank accounts the visa applicant had several Commonwealth Bank accounts in his own name as well as a NAB account. The Tribunal asked the sponsor why the visa applicant also had a NAB account. She responded that she did not know and that she would ask for money and the visa applicant bought her a dishwasher.
- 35) The Tribunal asked the sponsor how they used their joint Commonwealth Bank [account]. She responded that she used it for their 'stuff'. The Tribunal referred to the fact that the statement for the period 1 January 2014 until 31 March 2014 shows one cash withdrawal [in] February 2014 and only 11 other transactions for groceries and fuel in that period. The previous statement covering the period 1 October until 31 December 2013 shows three transactions. The sponsor responded that she was paying the visa applicant \$500 per week because of the arrangement with their properties where they lives in one and rented the other. She stated that she does not have other documents because she gave them to the previous migration agent they used at the time they lodged the Partner visa application. The Tribunal has had regard to other statements in relation to the couple's joint bank account for the period 1 April until 30 September 2014 which also did not provide convincing evidence of the use of the joint account.
- 36) The Tribunal asked the sponsor about the large amount of funds held in the visa applicant's own [account] over the period 28 July 2014 and 27 January 2015 and asked why that amount was in the visa applicant's name only. She stated that they didn't have time to move into a joint account and then said that she did not mean that. She said she didn't think she should.
- 37) The Tribunal was provided with two receipts showing remittances from the sponsor to the visa applicant [in] March 2019 for \$[amount] and [in] December 2016 for \$[amount].
- 38) While the Tribunal recognises that it is difficult for couples living in different countries to establish joint financial arrangements, nevertheless, in this case the couple had an opportunity to establish joint financial arrangements. The Tribunal has had regard to the fact that the couple have separate properties. Although none of the sponsor's family attended the hearing who could have corroborated the claims regarding their advice that she keep the property in her name, the Tribunal is prepared to accept that they may have done so and that there are legitimate reasons why in a second marriage where there a children involved, a couple may by joint agreement decide to keep assets in separate names.
- 39) The Tribunal was concerned that the written evidence provided did not support the sponsor's claims regarding the use of their joint bank account. The Tribunal has had regard to and accepts the evidence that the sponsor provided other documentation to a previous migration agent. However the Tribunal is aware that the Commonwealth Bank provides access to statements for up to seven years including for closed accounts. The

Tribunal is concerned that the sponsor did not avail herself of this facility because the statements would not be supportive of the claims made.

- 40) Furthermore, the Tribunal is concerned that the visa applicant held reasonable sums of money in his own accounts and the sponsor was unable to provide clear reasons for this.
- 41) The Tribunal accepts that the remittances to the visa applicant demonstrate shows some support of him.
- 42) Overall, given the Tribunal is not satisfied that the evidence is sufficiently convincing as to the financial aspects of the relationship.

9. *Nature of the household*

- 43) The Tribunal considered the nature of the household including any joint responsibility for care and support of children, the parties' living arrangements and any sharing of housework.
- 44) The Tribunal is cognisant of the fact that the sponsor resides in Australia and the visa applicant resides in Lebanon this factor has been given less weight in consideration of whether the visa applicant is the spouse of the sponsor. However, as noted previously the couple did live together from January 2013 until January 2016
- 45) In a hand written statement dated 13 July 2019 provided by the sponsor to the Tribunal, she wrote that the she and the applicant shared one bedroom, one of the bedrooms was used by two of her children and the third by her [child]. She stated that the applicant was always responsible for all duties outside the house and all the repairs and that she was responsible for inside the home.
- 46) There are no children of the relationship however the sponsor has three [children] born in January 1997, November 1998, and January 2001 who lived with the couple after they married and prior to the visa applicant's return to Lebanon.
- 47) The sponsor's statement also refers to the applicant's role as a father figure to her children as their biological father rarely sees them. She states that the visa applicant used to attend their [sport] games and take them to school when he was able to and drove her [child] to his workplace. She stated that her children like him and miss him.
- 48) The Tribunal has had regard to the fact that the parties provided consistent evidence regarding the current arrangements in respect of the sponsor's children and the involvement of the visa applicant in their lives. The couple also provided consistent oral evidence regarding their household arrangements during the time they lived together, the use of their shared living space and daily routines.
- 49) The Tribunal had regard to written evidence provided. The Tribunal gave weight to those documents that were in joint names but gave no weight to others as outlined below:
 - a. a letter addressed to the visa applicant dated [March] 2019 from Suncorp Insurance stating his vehicle has been assessed as a total loss was given no weight as the visa applicant has been overseas for three years and the use of his vehicle in the interim is not dispositive of a genuine relationship between the parties.

- b. documents in respect of the visa applicant's property and utilities and receipts for household goods purchased in 2013 and in relation to the couple's business registered in their own names are not dispositive of a genuine relationship between the parties

50) The Tribunal acknowledges that the parties displayed knowledge of each other and the visa applicant is aware of the current circumstances of the review applicant's children. The Tribunal accepts the couple are known to each other but of itself it does not establish that the parties have a mutual commitment to a shared life as a married couple to the exclusion of all others and that the relationship is be genuine and continuing.

10. *Social aspects*

51) The Tribunal considered the social aspects of the relationship including whether the parties represent themselves to other people as being married to each other, the opinion of friends and acquaintances about the nature of the relationship and any basis on which the persons plan and undertake joint social activities.

52) In the application, the applicant stated that the couple have many friends and some relatives and they go to special functions and visit family and friends.

53) The visa applicant provided the Department with a number of photographs. They mainly consist of the visa applicant and sponsor and a number include other people. They are undated and unannotated. The Tribunal was provided with a copy of the visa applicant's recreational fishing license renewal which was due to expire [in] December 2014.

54) In a hand written statement dated 13 July 2019 provided by the sponsor she submitted that during their time together in Sydney, they couple used to socialise with her family and their few friends. They also used to go shopping and fishing and they visited Wollongong and [Town].

55) At hearing the sponsor referred to the couple having going fishing. She stated that after her [sibling] passed away she became isolated from people even those close to her although she would try to visit friends and family. She stated that she and the visa applicant would go shopping together and go out for a coffee or to a restaurant. The visa applicant stated they would visit [a relative's] house and socialise with family and all the children "would hang out together".

56) The Tribunal was provided with two Statutory Declarations from the sponsor's [children]. They both claim that the family's circumstances have become more difficult since the visa applicant left Australia and returned to Lebanon. They do not attest to the genuineness of the relationship. No other evidence of support was provided from family or friends. Although the sponsor referred to becoming somewhat isolated from people, both she and the visa applicant referred to spending time with family and friends. It is therefore of concern to the Tribunal that no statements of support were provided from family or friends. It was particularly troubling as the sponsor claimed that her family supported her relationship with the visa applicant due to the financial arrangements they were able to agree on in relation to her ownership of her house.

57) The Tribunal has had regard to statements of support from the sponsor's children and accepts their life changed when the visa applicant left Australia. Similarly, the Tribunal has had regard to photographs provided of the parties. The fact that they took some photographs together does not mean they are committed to a genuine and continuing relationship. That is, if the relationship was not genuine but a person wished to obtain

evidence to convince Immigration that it was, the same documents could have been obtained. As such, the Tribunal does not consider the photographic evidence to be dispositive of the issues at hand.

- 58) While the parties have provided some evidence to support in support of the social aspects of their relationship, the evidence provided was not strong to be convincing of the parties commitment to each other. The Tribunal is concerned that given the parties claimed to have been married since 2013 more supportive evidence could have been provided even though the visa applicant has been overseas in more recent years. Overall, the Tribunal was not satisfied as to the social aspects of their relationship.

Visa applicant's migration history

11. Unlawful period in Australia

- 59) The applicant was in Australia unlawfully from [November] 2006 until [March] 2013.

- 60) The Tribunal asked the sponsor about the visa applicant's migration history and whether she was aware that he was in Australia unlawfully for a period of time. She responded that she did not know until she was married. The Tribunal asked her if she was aware how long he was unlawful. She responded that she only started to find out after he applied for a visa. She stated that after they married he had a visa and he was able to work. The Tribunal explained to her that the visa applicant may have motivated to enter into a relationship to obtain a Partner visa. She responded that was not his only motivation. She stated that his first wife passed away. She stated that after she and her former husband divorced she had other offers of marriage. She stated that the visa applicant agreed that the house would be for her children.

- 61) The Tribunal put to the sponsor in the terms required by s.359AA of the *Migration Act* that in the light of the fact that the visa applicant's Bridging remained in Australia unlawfully when his Bridging visa ceased in November 2006 until he was granted another bridging visa [in] March 2013 it was concerned the broke Australian law. She referred to the fact that when there were male visitors her husband wouldn't let her sit with male visitors so she did not know he had broken the law. She stated that he had used a migration agent that gave him poor advice. The Tribunal again asked the sponsor whether she wished to comment on or respond further. She stated that she would like additional time to do so in writing. No further submissions were made to the Tribunal in respect of this issue. The Tribunal did not give any weight to the sponsor's knowledge of the visa applicant's unlawful status for an extended period.

- 62) The visa applicant gave evidence that the sponsor was aware before they married that he was in Australia illegally. The visa applicant stated that he remained unlawfully to help his first wife with treatment. She needed treatment from 2002 until she passed away in 2008. The visa applicant stated that after his wife passed away he was trying to find an employer to sponsor him to remain in Australia but on the completion of the job and they withdrew the sponsorship. The Tribunal put it to him that his response regarding why he remained in Australia unlawfully was not clarified by his response. He said that after his wife passed away the situation not that good. He was looking for another lady to get married. He also stated that lots of people of in Australia owed him money and that he could not leave the money here.

- 63) The Tribunal is concerned despite the visa applicant's claims regarding why he remained in Australia unlawfully that he did so for an extended period of time in. This indicates that he is prepared to break Australian's migration laws.

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14. *Visa applicant's protection claims*

- 64) The sponsor gave evidence that she and the visa applicant are Muslims and would go to the mosque on special occasions and occasionally on Fridays. She stated that the visa applicant has always been a Muslim. The Tribunal asked her about his situation prior to their marriage. She said she wasn't sure of his situation at that time. When asked if they discussed issues such as faith prior to their marriage, she responded that they talked about the fact that his first wife had passed away and that he started to go to clubs with other people. The visa applicant also stated that he is Muslim and that when he was in Australia they would sometimes go the mosque on Fridays. He stated that he has always been a Muslim.
- 65) The Tribunal put adverse information to the review applicant as it required to under s.349AA of the *Migration Act*. The adverse information relates to claims in the visa applicant's Protection visa application that he was a Jehovah Witness. The Tribunal explained that this was inconsistent with the oral evidence that the visa applicant had always been a Muslim. The review applicant responded that after his wife died the visa applicant went out with some people and they went to clubs and things like that. She added that she is not 100% sure what happened at that time. The Tribunal explained that it is concerned that it could be interpreted that the visa applicant is prepared to say whatever he thinks will assist him obtain a visa. The review applicant stated that the visa applicant had lost his wife and kids he himself felt lost. She stated that he went to a lawyer who assisted him with his Protection visa application. She stated that she does not know who he lived but she knows he was under pressure. She said that he was with a different community every day and that at that time he didn't know what he was doing. The review applicant stated that what she knows about his life is that he had a lot of options women wanted him to marry a hard-working guy that don't care about religion. She does not think he said that for a visa. She stated that he had other ways of obtaining a visa, like marrying someone.
- 66) The Tribunal asked the review applicant why the visa applicant did not initially explain to the Tribunal when asked about his religion, that he was involved in with Jehovah Witness for a period after his wife died because he was lost at that time. She responded that maybe he did not understand the question. She stated that the Tribunal asked if he was Muslim. The Tribunal put it to her that it had asked him if he always a Muslim. She stated that if he had been asked him if he had converted and converted back his response may have been different answer.
- 67) The applicant's migration representative made oral submissions on the issue of the visa applicant's protection claims. He stated that he thinks the visa applicant's former migration agent may have convinced him that it would help if he claimed he was involved in the Jehovah Witness. He stated that it happened a lot amongst Lebanese people at that time. The Tribunal agreed to accept further submissions on the matter.
- 68) On 9 September 2019 the Tribunal received an email from the applicant's migration agent stating that the visa applicant provided the following additional response:

15. "at that time his first wife was under treatment for her cancer and he was depressed. He was living with few persons who are followers of that Church. They convinced him that his only way of obtaining a visa to remain in Australia is

to apply for a Protection visa based on being a member of Jehovah Witness. They took him to [Mr A] who lodged the application on behalf of him. He paid [Mr A] \$[amount] in advance and he was supposed to pay more three months later. [Mr A] promised him with the visa he did with so many others. Later on [Mr A]'s registration was cancelled as you are aware.

16. He also said that because he never reached the stage of being immersed in water and never obtained a certificate that he had become a Jehovah witness, this means he had not changed his religion. That is the reason why he gave you the answer"³.

69) The Tribunal accepts that the visa applicant may have had a difficult period after his first wife passed away, however, it notes that he did not return to Lebanon from the time he arrived in April 2004 until he finally departed in 2016 despite his first wife's health. His first wife passed away in 2008. Although the visa applicant claimed that he remained in Australia to assist his wife with her treatment, he also made claimed that he did not leave Australia because people owed him money and he could not leave the money here.

70) The Tribunal is prepared to accept that the visa applicant has always been a Muslim and accepts that the visa applicant's first migration agent was later deregistered. However, the Tribunal is of the view that an applicant's migration claims are their own responsibility and not of their migration agent. Therefore, the Tribunal is concerned that the visa applicant made claims in his Protection claims which he now states were untrue and again shows that he is prepared to flout Australia's migration laws.

17. *Other matters*

71) The Tribunal was provided with a report from a clinical psychologist dated 2 August 2018 which provides a psychological assessment and diagnosis of the sponsor. The report states that the sponsor has been attending the rooms of the clinical psychologist since [March] 2018 on a regular basis for assessment and psychological treatment of symptoms and anxiety through a Mental Health Care Plan. The document outlines the sponsor's psychological symptoms and states that:

18. "[name of sponsor] displays and report symptoms of low mood, tearfulness during consultations, a lack of motivation (given up meeting friends), lack of confidence, low self-esteem (feelings of inadequacy), disrupted insufficient sleep (wakes up often during the night), constant emotional fatigue and physical lethargy, social withdrawal (lack of interest in pleasurable activities), social isolation (prefers to stay home all the time), loss of appetite, low tolerance to stress or is due to financial distress, increased irritability, low tolerance to anger and frustration (gets upset over petty matters), excessive worry and anxiety regarding the well-being of her husband whom she misses deeply and this is causing her emotional distress, concentration difficulties (inability to remain focused during conversations), deterioration in memory (forgetfulness), confusing thoughts, tension headaches, difficulty completing daily chores such as cooking, cleaning, washing dishes, doing the laundry, grocery shopping, etc"⁴.

72) The report states that the sponsor has made a commitment to a particular treatment regime. It also recommends that her psychological situation will improve if her husband is allowed to return to Australia soon as possible so that she is able to receive emotional support and assistance from her husband of which she is in desperate need of.

³ AAT file, folio 159.

⁴ AAT file, folio 69.

73) The Tribunal accepts that the sponsor has attended a the clinical psychologist between the end of March and August 2018 for treatment regarding her symptoms of anxiety and notes that it is the opinion of psychologist that the sponsor's psychological situation will improve if her husband is allowed to return to Australia soon as possible. However, the psychologist's opinion regarding the sponsor mental health is not dispositive of whether a genuine relationship between the sponsor and the visa applicant exists. Furthermore, the Tribunal has had regard to the fact that the report provided is now some 12 months old and may not reflect the sponsor's current mental health.

19. *Overall assessment*

74) Overall, the Tribunal found the evidence provided by the parties was thin and therefore unconvincing particularly in light of the fact that they claim to have been in a relationship since 2011. The Tribunal would have expected more convincing evidence of various aspects of the couple's relationship despite the fact the visa applicant has been overseas for the past three years. The Tribunal acknowledges that the motive of obtaining a migration outcome does not preclude the possibility of a genuine spousal relationship, but in this case is not satisfied on the evidence and testimony provided, that the parties were in such a relationship at the time of application or decision.

75) While the Tribunal accepts that some aspects of the evidence points to its genuine nature, given the Tribunal's concerns referred to above, overall the Tribunal is not satisfied that the applicant's relationship with the sponsor is genuine and continuing. The Tribunal is not satisfied that the applicant and the sponsor have a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal is not satisfied that they live together or not apart on a permanent basis. The Tribunal is not satisfied the visa applicant is the spouse of the sponsor as defined in the Act.

76) On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made or at the time of this decision.

77) Therefore the visa applicant does not meet cl.309.211 and cl.309.221.

78) For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.

DECISION

79) The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Linda Holub
Member

Attachment - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).